

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

-against-

PARNON ENERGY INC., ARCADIA PETROLEUM LTD,
ARCADIA ENERGY (SUISSE) SA, NICHOLAS J.
WILDGOOSE AND JAMES T. DYER,

Defendant.

11 Civ. 3543 (WHP)

Master File No. 11 Civ. 3600
(WHP)

IN RE: CRUDE OIL COMMODITY FUTURES
LITIGATION

THIS DOCUMENT RELATES TO:
ALL MATTERS

NOTICE OF APPEAL

Notice is hereby given that non-party objectors Morgan Stanley Capital Group, Inc. and Shell Oil Company (collectively “Non-Party Objectors”), hereby appeal to the United States Court of Appeals for the Second Circuit from the Court’s October 25, 2013 Memorandum & Order (Dkt No. 139, *U.S. Commodity Futures Trading Commission v. Parnon Energy Inc. et al.*, No. 11 Civ. 3543 (WHP) (SDNY); Dkt. No. 160, *In re: Crude Oil Commodity Futures Litigation*, No. 11 Civ. 3600 (WHP) (SDNY)), granting in part and denying in part the non-party

objections to, and motion for a protective order concerning, Putative Class Plaintiffs' First Request for the Production of Documents.¹

Respectfully submitted,

Dated: November 8, 2013

By: _____ s/ Joshua L. Shapiro

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¹ Given that the Court's discovery order is directed to Defendants in Case No. 11 Civ. 3600 (WHP) – and not the non-party objectors – and the Court's order requires Defendants to produce documents in their possession that contain highly proprietary and confidential information of the non-party objectors, and also given that the discovery order finally resolves an issue that is separate from the merits of the underlying action and that will effectively be unreviewable on appeal from a final judgment, the Court's October 25, 2013 Memorandum & Order is immediately appealable under the collateral order doctrine of *Cohen v. Beneficial Indus. Loan Corp.* 337 U.S. 541, 546-47 (1949). See *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 205-06 (2d Cir. 2012); see also *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 18 & n.11 (1992); *Perlman v. United States*, 247 U.S. 7, 12-13 (1918); *In re Air Crash at Bell Harbor*, 490 F.3d 99, 106 (2d Cir. 2007) (recognizing that the holder of an asserted privilege may immediately appeal the enforcement of a subpoena when the subpoena is directed at another person who does not object to providing the testimony or documents at issue).